

SECRETARY OF STATE[721]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby adopts amendments to Chapter 22, "Voting Systems," Iowa Administrative Code.

These amendments remove obsolete requirements for the use and testing of voting machines no longer authorized for use under Iowa law pursuant to Iowa Code Supplement section 52.2 as amended by 2008 Iowa Acts, Senate File 2347, effective April 1, 2008. These amendments also expand the ability of county auditors to use electronic ballot marking devices with additional optical scan voting systems as required by 2008 Iowa Acts, Senate File 2347, and as certified for use in Iowa by the Iowa Board of Examiners for Voting Systems on June 27, 2008.

In compliance with Iowa Code section 17A.4(2), the Secretary finds that notice and public participation are contrary to the public interest because the use of direct recording electronic voting devices in Iowa elections is no longer allowed under Iowa law beginning November 4, 2008, and county auditors are currently in the process of preparing optical scan voting systems for the November 4, 2008, general election.

The Secretary also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator because the law's prohibition on further use of direct recording electronic voting devices goes into effect beginning with the November 4, 2008, general election and county auditors are currently in the process of preparing optical scan voting systems for use in that election. These amendments expand the use of electronic ballot marking devices to include additional optical scan voting systems as certified for use in Iowa by the Iowa Board of Examiners for Voting Systems on June 27, 2008. The adopted amendments are of immediate importance to the election process and confer a benefit to the voters of Iowa.

These amendments are also published herein under Notice of Intended Action as **ARC 7266B** in order to solicit public comment.

The Secretary of State adopted these amendments on September 19, 2008.

These amendments became effective September 19, 2008.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2347.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **721—22.39(52)**.

ITEM 2. Amend rule 721—22.41(52) as follows:

721—22.41(52) Testing Public testing of optical scan systems. ~~As a part of preparation for use for each election, the commissioner shall thoroughly test all automatic tabulating equipment (including equipment that will be used for counting absentee ballots) as required by Iowa Code section 52.35. All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35.~~ The process and results of the test shall be carefully documented and shall be available for inspection.

22.41(1) Each automatic tabulating device (including equipment that will be used for counting absentee ballots) shall be tested to determine the following:

a. to c. No change.

d. The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled, and the write-in votes are ~~reported~~ tallied correctly.

e. and f. No change.

22.41(2) No change.

ITEM 3. Amend rule 721—22.42(52) as follows:

721—22.42(52) Preparing test decks. The commissioner shall prepare test decks from all ballots printed for use in the election, including those for use at the polling places and for absentee balloting. ~~Test ballots for optical scan voting equipment shall test the reporting of votes for every office and public measure on the ballot at the election.~~ Each of the following test decks shall be prepared for every precinct and ballot style in the election. Commissioners may use additional test methods to supplement the process described in this rule.

22.42(1) Requirements for all test decks prepared by the commissioner and used in public testing. The commissioner shall:

a. ~~The commissioner shall:~~ Replace ballots spoiled during the marking process instead of attempting to correct errors.

(1) ~~Never erase errors and never use correction fluid or correction tape to cover errors. Replace the ballot instead.~~

(2) b. Fill in each oval completely using the recommended pen ~~or~~ pencil or AutoMARK VAT.

(3) c. Mark each ballot “Test Ballot,” ~~and label each ballot to indicate whether it is from the systematic test deck, the overvote and blank ballot test deck or the straight party test deck.~~

b. ~~In counties where the AutoMARK VAT is used, the commissioner may prepare some test ballots using the AutoMARK VAT.~~

c. ~~Hand-marked ballots that include folds, erasures, marginal or extra marks shall not be used in the test decks described in this rule. An additional set of test ballots may be prepared to test election day conditions, particularly for folded absentee ballots.~~

22.42(2) Test Required test method. The commissioner shall:

a. Prepare a test plan showing the planned number of votes, including undervotes and overvotes for each oval on the ballot. ~~This plan includes ovals associated with candidates, write-in lines, judges and public measures and straight party voting.~~ Follow the instructions in subrules 22.42(3) through 22.42(6) 22.42(5) in preparing the test decks.

b. to f. No change.

22.42(3) Systematic test deck. ~~The commissioner shall use this deck to test each oval on the ballot.~~ The commissioner shall determine a unique number of votes for each candidate in each office, such as one vote for each write-in oval for the office, two votes for the first candidate listed (or “NO” votes on public measures and judges), three votes for the second candidate, etc. It is not necessary to have a different number of votes for each write-in oval for offices for which the voter may select more than one candidate. However, the write-in oval shall have a different number of votes marked than any candidate for the office. The commissioner shall:

a. to d. No change.

22.42(4) System-specific testing requirements. Separate tests are prescribed for each certified voting system.

a. No change.

b. ~~Diebold Election Systems~~ Premier Election Solutions.

(1) and (2) No change.

22.42(5) No change.

~~**22.42(6) Combining test decks.** The commissioner may tabulate the combined test decks after separately testing each one.~~

ITEM 4. Amend rule 721—22.43(52) as follows:

721—22.43(52) Public testing of optical scan systems Conducting the public test. All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35.

22.43(1) The equipment shall be inspected to determine whether it has been prepared properly for the election at which it will be used. The following information shall be verified:

a. The correct program cartridge or memory card is in place for the election and the precinct or precincts in which it will be used.

~~b. —The appropriate ballots are available for the test of each automatic tabulating device to be used in the election.~~

~~c. b.~~ All counters are set at zero before the test is begun.

~~22.43(2) Each automatic tabulating device shall be tested to determine that the device and its programs will accurately tabulate votes for each candidate and question on the ballot.~~

~~22.43(3)~~ 22.43(2) The commissioner shall conclude the test not later than 12 hours before the polls open on election day. Following the test, the tabulating equipment shall be inspected to determine that:

a. to c. No change.

The results tape from each scanner produced during the public test shall be signed by the person conducting the test and by any observers present at the test. The signers shall write their signatures at the end of the tape where it will be detached from the machine. The tape shall be torn or cut across the signatures, so that a portion of the signature is on the tape remaining on the tabulating device. The test results tape, including a part of the tester's signature, shall be retained with the appropriate test deck for the period of time required by Iowa Code section 50.19.

~~22.43(4)~~ 22.43(3) Test deck submitted by observers. Any person who is present at the public test may mark ballots to be used to test the voting equipment. The following conditions apply:

a. Not more than ten ballots may be submitted by any person.

b. Only official ballots provided by the commissioner at the test shall be used. ~~The commissioner shall provide sample ballots or photocopies of sample ballots to anyone upon request.~~

c. ~~The preparer~~ observer submitting the test shall provide a written tally of the test deck.

d. The results of the machine tabulation shall be printed and compared with the ~~preparer's~~ observer's tally. If there are differences, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the program or equipment shall not be used at the election.

e. The test decks, the ~~preparer's~~ tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

ITEM 5. Amend subrule 22.50(3) as follows:

22.50(3) Evacuation. If it is necessary to evacuate the election office, a satellite absentee voting station or a polling place, the precinct election staff or the election officials shall immediately attempt to notify the commissioner and take the following actions:

a. Keep people safe. ~~The officials shall make sure that all voters and other persons are safely out of the polling place.~~

b. Protect If possible, gather and secure voted ballots, election equipment and critical election documents and materials. After the safety of the voters and others has been secured, the officials shall remove or secure the following:

(1) ~~—The ballot box or electronic voting device containing voted ballots.~~

(2) ~~—The keys to the voting equipment and any memory cards, cartridges or other data storage devices containing the election information.~~

(3) ~~—All unvoted ballots.~~

(4) ~~—The precinct election register.~~

(5) ~~—Signed declarations of eligibility.~~

(6) ~~—The tabulating device.~~

ITEM 6. Amend subrule 22.51(1) as follows:

22.51(1) Serial number. Each memory card shall have a serial number printed on a readily visible ~~permanent~~ label. The label shall include the name of the county.

ITEM 7. Amend paragraphs **22.51(8)** "a" to "c" as follows:

a. Seal numbers from the voting equipment; and

~~b. —Keys provided for the voting equipment; and~~

~~c. b.~~ Condition of seals on ballot containers.

ITEM 8. Amend subrules 22.51(10) and 22.51(11) as follows:

22.51(10) Return of memory cards. If the precinct election officials remove the memory cards from the voting equipment on election night, they shall return to the commissioner the memory cards and the seals used to secure them in a sealed envelope or other container. All officials of the precinct shall witness the statement on the envelope or other container. The label on the envelope or other container shall be in substantially the following form:

Memory Cards

Election Date: _____

Precinct: _____

This envelope contains Memory Cards and memory card access seals from this precinct.

Machine Number	Memory Card #	Memory Card Seal #

[Signatures of all precinct election officials: shall be included on the label.]

1. _____
2. _____
3. _____
4. _____
5. _____

22.51(11) Storage. If the memory cards are returned inside the voting equipment to the commissioner, the machine serial numbers and the seal numbers shall be verified against the verification log described in subrule 22.51(8). ~~The memory card audit log shall be printed before the memory cards are removed.~~ When the memory cards are removed, their serial numbers shall also be verified against the verification log returned by the precinct's elections officials. The memory card audit log shall be retained for the time period required by Iowa Code section 50.19.

ITEM 9. Rescind and reserve rule **721—22.100(52)**.

ITEM 10. Amend rule **721—22.101(52)**, definitions of “Optical scan voting system” and “Tabulating device,” as follows:

“*Optical scan voting system*” means a system employing ~~paper~~ optical scan ballots under which votes are cast by voters by marking ~~paper~~ the optical scan ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

“*Tabulating device*” means the portable apparatus which ~~removes the optical scan ballot from the secrecy envelope,~~ examines and counts the votes recorded on the optical scan ballot, and produces a paper printout of the results of the voting.

ITEM 11. Amend rule **721—22.102(52)** as follows:

721—22.102(52) Optical scan ballots. The optical scan ballots shall be printed pursuant to Iowa Code chapters 43 and 49 and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the system.

22.102(1) The optical scan ballots may be printed on both sides of a sheet of paper. If both sides are used, the words “Turn the ballot over” shall be clearly printed ~~in at least 24 point type (1/4" high)~~ on the front and the back of the optical scan ballot, at the bottom.

22.102(2) Printed at the top of the front side of the optical scan ballot shall be the name and date of the election; the words “Official Ballot”; a designation of the ballot ~~rotation~~ style or precinct, if any; and a facsimile of the commissioner’s signature.

22.102(3) The voting target shall be printed opposite each candidate’s name and write-in line on the optical scan ballot, and opposite the “yes” and “no” for each public measure and judge. ~~Wherever possible, the~~ The voting target shall be printed on the left side of the name or “yes” and “no”. The voting target shall be an oval unless the voting system requires a target with a different shape.

22.102(4) to 22.102(6) No change.

22.102(7) Ballots shall be coded as necessary to allow the tabulation program to identify the appropriate ballots for the precinct. Ballots shall be coded so the tabulating device can identify by precinct the votes cast for each office and question on the ballot by precinct. The votes from the absentee and special voters precinct shall be reported as a single precinct except in general elections pursuant to Iowa Code section 53.20 as amended by 2008 Iowa Acts, House File 2367. Identical ballots shall not be coded to identify groups of voters within a precinct.

22.102(8) No office, ~~including a judicial office~~, or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. If the full text of a public measure will not fit on a single column of the ballot, the commissioner shall prepare a summary for the ballot and post the full text in the voting booth as required by Iowa Code section 52.25.

22.102(9) No change.

ITEM 12. Amend subrules 22.261(2) and 22.261(3) as follows:

22.261(2) *Configuration choices*. The following selections are mandatory for all elections:

a. No change.

~~*b.* —Ballot format. The voting target shall be printed on the left side of the candidate’s name and on the left side of each “yes” and “no” choice for public measures and judges. The voting target shape shall be an oval.~~

~~*c.*~~ *b.* Ballot control. In an official election, the commissioner shall never program the Model 100 for unconditional acceptance of all ballots; shall not divert blank ballots to the write-in bin; and shall always accept undervoted ballots. The system shall be programmed to query the voter in each of the following situations:

(1) to (3) No change.

~~*c.*~~ *c.* Unit control. The commissioner shall not select automatic transmission of election results by modem. The precinct officials must print the official results at the polling place before transmitting them.

~~*d.*~~ *d.* Reports. The following are required reports:

(1) to (3) No change.

~~*e.*~~ *e.* Reopen polls. The commissioner shall enable this option, but protect it against unauthorized use. If it is necessary to reopen the polls, the chairperson of the precinct board shall contact the commissioner for the password.

~~*f.* —The commissioner shall not authorize automatic transmission of the election results immediately after closing the polls. The results shall be printed first.~~

22.261(3) *Ballot printing*. ~~The voting target shall be an oval printed on the left side of the candidate’s name and the “yes” and “no” choices for judges and public measures.~~

a. Format. The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the “yes” and “no” choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure ~~or judicial office~~ on any ballot shall be divided to appear in more than one column or on more than one page of a ballot.

b. No change.

- ITEM 13. Rescind subrule **22.261(5)**.
- ITEM 14. Renumber subrule **22.261(6)** as **22.261(5)**.
- ITEM 15. Rescind subrules **22.261(7)** and **22.261(20)**.
- ITEM 16. Amend rule **721—22.262(52)**, catchwords, as follows:

721—22.262(52) ~~Diebold Election Systems’~~ Premier Election Solutions’ AccuVote OS and AccuVote OSX precinct count device devices.

ITEM 17. Amend subrules 22.262(3) to 22.262(5) as follows:

22.262(3) *Zero totals reports.*

~~a.~~ Long form zero totals reports showing all counters at zero shall be printed following memory card programming, before counting ballots in the Pre-Election Mode and as the ballot reader is opened on election day.

~~b.~~ — ~~The election day zero totals report shall be printed twice. The first copy shall be posted in the polling place for public inspection as required by 721—subrule 22.201(2). The second copy shall remain inside the ballot scanner and form a continuous record of the election with the election results report.~~

22.262(4) *Ballot printing.* Although the ~~Diebold Election Systems’~~ Premier Election Solutions’ GEMS voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48. For all elections the voting target shall be an oval printed on the left side of each choice on the ballot.

22.262(5) *Preelection testing.* All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52) ~~and 721—subrule 22.201(2)~~. At the commissioner’s discretion, the commissioner may conduct additional tests.

ITEM 18. Rescind subrule **22.262(6)**.

ITEM 19. Adopt the following **new** rule 721—22.263(52):

721—22.263(52) *AutoMARK Voter Assist Terminal (VAT).*

22.263(1) *Acceptance testing.* Upon receipt of the equipment from the vendor, the commissioner shall subject each AutoMARK VAT to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of all functionalities of the device.

22.263(2) *Audio ballot preparation.* Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate’s name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

22.263(3) *Preelection testing.* Each AutoMARK VAT shall be tested before each election in which it will be used. The commissioner may use the AutoMARK VAT to prepare some ballots for test decks required by rule 721—22.42(52). In addition, the commissioner shall:

- a. Perform the test ballot print, then review the ballot to be sure that all ovals are darkened and the appropriate names are printed on each line.
- b. Calibrate the touchscreen.
- c. Select, then deselect each voting position in each race.
- d. Verify that the overvote and undervote functions are programmed correctly.
- e. Test the write-in function for each office on one ballot, and test all of the letters in the alphabet.
- f. Use the audio ballot function to mark one ballot.
- g. Tabulate the marked ballots from this test on the appropriate optical scanner.
- h. Ensure that the AutoMARK VAT is available for demonstration at public tests.

22.263(4) *Compact flash memory cartridge or memory card.* The compact flash memory cartridge shall be installed before the AutoMARK VAT is locked, sealed and shipped to the polling place for election day. In addition to locking the memory cartridge access door, the commissioner shall seal the door with a numbered seal, record the seal number, and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the AutoMARK VAT is delivered to the

polling place until the time the precinct election officials arrive, the AutoMARK VAT shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

22.263(5) Calibration testing. The commissioner may provide for printer and touchscreen calibration testing after delivery of the AutoMARK VAT to the polling place. If calibration testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day and shall keep a log for each AutoMARK VAT and record the machine serial number, the precinct name or number, the date and time of the test, the name of the person performing the test, and the lifetime printer counter number at the completion of the test. The ballot to be used in the calibration test shall be provided to the tester and shall be labeled with the precinct name and election date. The completed calibration test ballot shall be returned to the commissioner and kept with the election records.

22.263(6) AutoMARK VAT keys. Possession of the AutoMARK VAT keys shall be restricted to precinct election officials and authorized members of the commissioner's staff.

22.263(7) Table. The table used to support the AutoMARK VAT shall meet the following requirements: The table shall be sturdy enough to hold the 40-pound AutoMARK VAT safely. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep. The top of the table shall be from 28 inches to 34 inches above the floor.

22.263(8) Privacy. The commissioner may provide each AutoMARK VAT with a privacy shield to protect the secrecy of each voter's ballot. The commissioner shall instruct the precinct election officials to position the AutoMARK VAT to provide maximum access for voters (especially voters who use wheelchairs) as well as privacy.

22.263(9) Abandoned ballots. If a voter or precinct election official discovers that a voter has left the AutoMARK VAT without printing the voter's ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing the ballot or making any changes, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

ITEM 20. Rescind and reserve rules **721—22.350(52)** and **721—22.351(52)**.

ITEM 21. Rescind and reserve rules **721—22.431(52)** to **721—22.434(52)**.

ITEM 22. Rescind and reserve rules **721—22.463(52)** and **721—22.464(52)**.

ITEM 23. Rescind and reserve rule **721—22.500(52)**.

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